

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1642 OF 2006

Mr.Jagdish Mahiral Jagtap .. Petitioner

Vs.

M/s.Consulting Engineering
Services (India) P.Ltd. & Ors. .. Respondents

Mr.Atul G. Damle for the petitioner

Mr.A.B.Vagyani for respondent no.1

CORAM : J.N.PATEL, J

DATED : 23RD JANUARY, 2007

P.C.:

1. Heard.

2. Mr.Jagdish Mahiral Jagtap is original accused no.1 who has challenged the issuance of process in a complaint filed by the respondent company u.s.138 of the Negotiable Instruments Act, 1881.

3. It is the case of the petitioner that in his capacity as a Branch Manager of respondent no.2

Bank at Paud Road, Kothrud, Pune, he has issued a Demand Draft bearing no.216548 dt.6.12.04 in the name of the Manager, Union Bank of India which was not honoured by the respondent no.2 Bank (Original Accused no.2) for the reason that respondent no.2 suspected foul play in issuance of the Demand Draft which is evident from the Memorandum issued to the respondent no.1 Complainant by the respondent no.2 (original accused no.2) and therefore, strictly speaking, no offence has been committed by the petitioner (Original accused no.1) as none of the ingredients which make out an offence under section 138 of the N.I.Act are attributed in his case for the reason that it was the responsibility of his employer, Union Bank of India, to have honoured commitment which were made by him on behalf of the Bank in his capacity as Branch Manager.

4. The petitioner has sought quashing of the proceedings by preferring a Criminal Revision Application no.673 of 2005 in the Sessions Court at Pune which rejected his application and, therefore, he has moved this court by invoking extraordinary jurisdiction under section 482 of the Cr.P.C.

5. Having gone through the complaint lodged by respondent no.1 and the impugned order of the 9th Adhoc Assistant Sessions Judge, Pune passed on 16.06.06 in Criminal Revision No.33 of 2006, this court finds that the Complainant has made out prima facie case in the complaint and, therefore, the learned Magistrate was justified in issuing process. The learned Court of Sessions in Revision has taken into consideration the plea raised by the petitioner. The plea raised by the petitioner is that he is personally not liable for the refusal on the part of the bank to honour commitment as he was not an account holder or owed any liability to honour the D/D issued by him under his signature which was in the capacity of Branch Manager, does not exonerate him from the liability and therefore, the process issued against him cannot be quashed.

6. There is no merit in the petition and the same is dismissed.

(SHRI J.N. PATEL, J)